

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1806 of 2003

with

CIVIL APPLICATION NO. 6786 OF 2003

For Approval and Signature:

HON'BLE MR.JUSTICE KSHITIJ R.VYAS
and
HON'BLE MR.JUSTICE K.S.JHAVERI

- =====
- 1 . Whether Reporters of Local Papers may be allowed
:
to see the judgement?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?
-

EXECUTIVE ENGINEER

Versus

ADAMBHAI KASAMBHAI SUMRA LRS OF DECD. ZARINA ADAMBHAI SUMRA

Appearance:

MS RV ACHARYA for appellant/applicant No. 1-2
MR SANDEEP N BHATT for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE KSHITIJ R.VYAS
and

HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 17/03/2004

COMMON ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE KSHITIJ R.VYAS)

Admit. Learned Advocate Mr.Sandip Bhatt waives service on behalf of the respondent.

2. The appellants (original defendants) in this appeal, under Section 96 of the Code of Civil Procedure, have challenged the judgment and decree dated 5.4.2003 passed by the learned Civil Judge (SD), Morbi in Special Civil Suit No. 106 of 2002 wherein the learned Judge has awarded an amount of compensation of Rs.1,50,000/against the total claim of Rs.4,50,000/- with running interest at the rate of 12% per annum from the date of filing of the suit, i.e. 27.7.2002 till realisation. The appellants were also directed to pay the cost of the suit to the respondent and to bear their own cost.

3. The plaintiff is the father of deceased Zarina, who was unmarried; doing domestic work at five different houses in Avenue Park Society, and was earning Rs.2,500/per month and thus she was helping the plaintiff. According to the plaintiff, in the sub-station of the defendants, one electric transformer was installed near Garbi Chowk of Avenue Park Society, at Morbi. On 14.6.2002 when Zarina was passing near the said sub-station, she came in contact with the electric wire of the transformer and she died on the spot. It is the say of the plaintiff that due to the negligence of the defendants, the deceased died and the defendants are solely liable for the said act. Two days prior to the incident, the defendants were in fact informed all the members of the Avenue Park Society that a live electric wire of the transformer was noticed. However, the defendants have not taken care to solve the problem of the electric wire coming out from the transformer. The plaintiff, therefore, alleges that no elementary precaution of periodical inspection of wires and lines was taken by the defendants. Therefore, it was a case of "res ipsa loquitur". The plaintiff lost his young child aged about 13 years on account of the gross negligence of the defendants and therefore, they are liable to pay the compensation to the plaintiff. The plaintiff has claimed Rs.4,50,000/- with running interest at the rate of 15% per annum from the date of the suit and costs of the suit against the defendants.

4. The defendants filed written statement and have denied the suit of the plaintiff in toto. It is contended that Zarina touched the transformer and she

died due to her own negligence and therefore, the defendants are not responsible for the death of the child Zarina. The defendants have denied that the deceased was earning Rs.2,500/- per month.

5. The trial Court framed the issues at Exh.13. After appreciating the oral as well as documentary evidence on record, the trial Court held that the plaintiff has proved that his daughter Zarina died due to electrocution because of the negligence of the defendants Board and therefore, the plaintiff is entitled to compensation of Rs.1,50,000/- with interest at the rate of 12% per annum.

6. We have heard learned Advocate Ms.Acharya for the appellants as well as learned Advocate Mr.Sandip Bhatt for the respondent.

Even though the learned Advocate for the appellants has challenged the findings recorded by the trial Court on the question of negligence as well as compensation by contending that there was no negligence on the part of the appellants and that there was no sufficient evidence for claiming the amount of compensation, from the reasonings given by the learned trial Judge, we are of the opinion that the learned Judge has considered all the aspects of the matter and has rightly come to the conclusion that the deceased child died due to electric shock due to negligence of the appellants. It is not in dispute that the child died due to electrocution when she came in contact with the transformer. It is also not in dispute that there was live electric wire and the electricity was passing through the same and the child came in contact with the transformer. Considering this aspect, the trial Court rightly observed that if the electricity passes through the live wire and somebody gets in contact with the same, it is nothing but lack of proper care and caution on the part of GEB and there is negligence on the part of the Board. We accordingly confirm the findings recorded by the learned trial Judge, namely, that the deceased died due to electric shock on account of negligence of the appellants.

7. As far as the question of awarding compensation is concerned, the learned trial Judge, after following the decision of the Apex Court in the case of Haji Zainullahkhan, reported in 1994 ACJ 993, awarded just and proper compensation to be the conventional amount for non-earning members of the family like young children and students. The Apex Court, in the case before it, was

considering the case of a student of 14 years and had awarded Rs.1.5 lacs to be the just compensation. Apart from that, Schedule II to the Motor Vehicles Act, 1988 provides that the notional income for the purpose of compensation to those who have no income may be taken to be Rs.15000/- per annum out of which 1/3rd has to be deducted for the notional personal expenses and thereafter on application of suitable and appropriate multiplier, just and proper compensation can be ascertained. The multiplier for children upto 15 years of age has been set out to be 15 and applying the same, the compensation in the case of a child upto 15 years will come to Rs.1.5 lacs. Considering this aspect, in our opinion, the trial Court was justified in awarding an amount of Rs.1.5 lacs being the amount of compensation.

8. Learned Advocate for the appellants, however, has challenged the interest awarded at the rate of 12% p.a. on the amount of compensation. In the submission of learned Advocate, the trial Court ought to have awarded interest at the rate of 9% p.a. Our attention is invited to the decision in the case of Kaushnuma Begum and ors. v. New India Assurance Co. Ltd. (2001) 2 SCC 9. Mr.Bhatt, learned Advocate appearing for the respondent, on the other hand, while supporting the judgment of the trial Court, has submitted that the question of interest can be determined in the facts and circumstances of the case. In the submission of learned Advocate, the facts and circumstances of the case do not warrant any reduction in the rate of interest.

9. The Apex Court, in the case of Kaushnuma Begum (supra) has observed:

"Earlier, 12% was found to be the reasonable rate of simple interest. With a change in economy and the policy of Reserve Bank of India, the interest rate has been lowered. The nationalised banks are now granting interest at the rate of 9% on fixed deposits for one year." Considering the said aspect, the Apex Court awarded interest at the rate of 9% p.a. from the date of the claim made by the claimants.

In a later decision in the case of United India Insurance Co. Ltd. v. Patricia Jean Mahajan and ors., reported in (2002) 6 SCC 281, the Apex Court, after referring to the case of Kaushnuma Begum has observed that:

"In our view, the reason indicated in the case of

Kaushnuma Begum is a valid reason and it may be noticed that the rate of interest is already on the decline. We, therefore, reduce the rate of interest to 9% in place of 12% as awarded by the High court."

In the latest decision in the case of Abati Bezbaruah v. Dy. Director General, Geological Survey of India, reported in (2003) 3 SCC 148, the Apex Court, after considering the above two decisions, while considering the question of rate of interest, has held that the rate of interest would depend upon the facts and circumstances of each case. In the said decision, the appellant deceased husband aged 48 years met with a fatal accident in 1990 while he was going on his scooter. Considering those facts, the Apex Court awarded interest at the rate of 9% p.a.

10. After taking into consideration the above decisions rendered by the Apex Court, we are of the opinion that having regard to the facts and circumstances of the case, the rate of interest be paid at the rate of 9% p.a. which is particularly in view of the fact that the rate of interest is already on the decline. The facts and circumstances of the present case do not warrant the appellants to pay interest at the rate of 12% p.a. on the amount of compensation. In our opinion, the trial Court has committed an error in awarding interest at the rate of 12%. The appeal, therefore, must succeed on the question of rate of interest.

11. In the result, the findings recorded by the learned trial Judge on the question of quantum of compensation are confirmed. We, however, partly allow this appeal by awarding interest at the rate of 9% p.a. to the respondent instead of 12% p.a. as granted by the trial Court. No order as to costs.

12. In view of the order passed in the main appeal, the Civil Application for stay stands disposed of. Interim relief stands vacated.

(Kshitij R. Vyas, J.)

(K.S. Jhaveri, J.)

Sreeram.